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VIA ELECTRONIC MAIL

Mr. Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

RE: Response of Texans for Jodey Arrington in MUR 7044

Through counsel, Texans for Jodey Arrington (the "Committee") and David Seim, in his official capacity as the Committee's Treasurer, provide the following response to the complaint filed by Glen Charles Robertson (the "Complainant") and designated by the Federal Election Commission (the "Commission") as MUR 7044.

On April 26, 2016, the Commission notified the Committee of the complaint filed by Complainant, who at the time was an opposing candidate for the Republican nomination in Texas's 19th congressional district. In summary, the complaint alleges that Mr. Arrington violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) by accepting prohibited corporate contributions by "apparently [] campaigning full-time since he announced his candidacy on October 15, 2015" while "being paid for full time work by Scott Laboratories, Inc." Compl. at ¶ 2.

As explained below, the Complainant's allegation is based entirely on an inaccurate reading of Mr. Arrington's personal financial disclosure report, and the *actual* facts make it apparent that the complaint is without merit and must be summarily dismissed as a matter of procedure. Furthermore, when one compares such facts to the three elements enumerated in 11 C.F.R. § 113.1(g)(6)(iii), it is clear that Mr. Arrington's salary during the period of his candidacy is consistent with the Commission's exemption for payments for *bona fide* employment under this regulation. Accordingly, the Commission should dismiss this frivolous complaint and close the file in this matter.

DOCUMENTATION SUPPORT THE FACTS ALLEGED

As an initial matter, it is important to inventory the documentation provided and/or cited by the Complainant to support the facts alleged:

1. Mr. Arrington's personal financial disclosure report filed with the House Committee on Ethics on February 13, 2016. *See* Attachment 1.
2. Mr. Arrington's campaign website and LinkedIn profile. This "evidence" confirms that Mr. Arrington is employed by Scott Laboratories, but it offers no evidence of Mr. Arrington's salary payments.
3. Two news articles discussing Mr. Arrington's candidacy. This "evidence" confirms that Mr. Arrington was actively campaigning, but it offers no evidence of Mr. Arrington's salary payments.
4. A transcript from a radio interview with Mr. Arrington on "The Chad Hasty Show." This "evidence" confirms that Mr. Arrington is employed by Scott Laboratories, that he has "an employer that gives [Mr. Arrington] the flexibility", and "that everybody had to approve it"; however, it offers no evidence of Mr. Arrington's salary payments.

The only non-circumstantial evidence provided by the Complaint is the copy of Mr. Arrington's personal financial disclosure report. The other evidence (#2, #3, and #4 listed above) does not provide enough evidence, on their own or collectively, to suggest that Mr. Arrington is not fulfilling his obligations to Scott Laboratories while campaigning for office. Nor does it constitute evidence of his compensation arrangement with his employer during the period of his candidacy. In other words, the lone documentation provided by Complainant to support the facts alleged is Mr. Arrington's financial disclosure report. That report is discussed in detail below.

FLAWED DOCUMENTATION

A closer inspection of Complainant's allegation, as well as Mr. Arrington's personal financial disclosure report that forms the basis of the complaint, reveals that Complainant failed to make a plausible representation regarding the amount of salary that Mr. Arrington has *actually* been paid during the period of his candidacy.

Specifically, the Complainant alleges that Mr. Arrington received \$183,330 "for the current year to filing of the form on February 6, 2016." The Complainant, however, failed to clearly read the personal financial disclosure report that Mr. Arrington submitted. *See* Attachment 1. On page 1 of the report, Mr. Arrington identifies the "coverage period" as being January 1, 2014 – November 2, 2015. *Id.* Based upon the stated coverage period, it should be apparent that the reported salary of \$183,330 represents Mr. Arrington's salary for all of 2015 through November 2, 2015, not from January 1, 2016 – February 6, 2016. In other words, the coverage period for this report, which serves as the basis for Complainant's

allegation, only includes eighteen days of salary payments while Mr. Arrington was "campaigning full-time."

Contrary to Complainant's erroneous allegation, which is not supported by any actual evidence, 11 C.F.R. § 111.4(d)(3)-(4) requires the complaint to conform to the following provisions:

(3) It should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction; and

(4) It should be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

Given that the Complainant's lone documentation to support the facts alleged is a personal financial report disclosing salary payments received by Mr. Arrington during the stated coverage period, not from January 1, 2016 – February 6, 2016, the "support" proffered by Complainant cannot possibly constitute a "clear and concise recitation of the facts" and certainly cannot be considered "documentation supporting the facts." Therefore, the complaint should be summarily dismissed as a matter of procedure because Complainant's incorrect allegation against Mr. Arrington and the Committee does not come close to meeting the Commission's minimal requirement for a complaint alleging a violation of the Federal Election Campaign Act of 1971, as amended (the "Act").

FLAWED LEGAL THEORY

The Act prohibits corporations from contributing to candidates. See 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)). The term "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person, for the purpose of influencing any election for Federal office," *id.* § 30101(8)(A), and also "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate . . . in connection with any election to [federal office]". 11 C.F.R. § 114.1(a)(1).

There are a number of exceptions to the definition of contribution, including salary payments related to an individual's employment when the following three conditions are met:

(A) The compensation results from *bona fide* employment that is genuinely independent of the candidacy;

(B) The compensation is exclusively in consideration of services provided by the employee as part of this employment; and

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(C) The compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.

11 C.F.R. § 113.1(g)(6)(iii).

The first element of the Commission's three-part test is whether Mr. Arrington's "compensation results from *bona fide* employment that is genuinely independent of the candidacy." 11 C.F.R. § 113.1(g)(6)(iii)(A). The "absence of any evidence tending to show that [a company and a candidate] entered into their arrangement with the intent to subsidize [the] campaign" supports dismissing a matter at the reason to believe stage. MUR 6023 (The Loeffler Group, LP and Susan Nelson), Factual and Legal Analysis at 5.

Here, the decision to hire Mr. Arrington was made well in advance and completely independent of his decision to campaign for Congress, and it was based on his professional background, public profile and relationships in the region, fundraising capabilities, and business acumen. In fact, at the time of Mr. Arrington's hiring, the 19th Congressional District was represented by a long-time incumbent who had not yet indicated that he might retire from Congress, which is powerful evidence of the *bona fide* nature of his employment at Scott Laboratories. See, e.g., General Counsel's Report #2, MUR 5571, at 11 (Tanonaka for Congress) (Sept. 20, 2007) (employment agreement entered into more than one year before candidate announced was evidence of a *bona fide* employment arrangement).

To that end, the Commission has previously emphasized that an employee's "substantial fundraising experience and the close ties . . . cultivated with potential donors at a prior fundraising job" are qualifications that demonstrate an employee is "uniquely suited for that position" and that an employment agreement is *bona fide* and independent of the candidate's campaign. MUR 5014 (Jeff Flake for Congress), General Counsel's Report #2 at 9 (Oct. 3, 2003); see also MUR 5571 (Tanonaka for Congress), General Counsel's Report #2 at 11 (recognizing the value of "business contacts" and "personal connections" when making a determination about *bona fide* employment).¹ Mr. Arrington's business generation activities also resulted in six new clients, which although not a prerequisite to finding *bona fide* employment,² further bolsters that conclusion. Cf. MUR 5260 (Talent for Senate), First General Counsel's Report at 20 (Dec. 19, 2002) (observing that former government officials' recruitment of six clients supported claim that services were *bona fide*). Nothing in the complaint addresses, let alone contradicts, these points.

¹ In dismissing the matter, the vote certification suggests that Commission followed the Office of General Counsel's recommendation. See MUR 5014 (Jeff Flake for Congress), Certification (Oct. 9, 2003).

² See, e.g., MUR 5571 (Tanonaka for Congress), General Counsel's Report #2 at 9 n.13 (finding *bona fide* employment even where the Office of General Counsel's analysis suggested that no new clients were generated).

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The second element of the Commission's test is whether the compensation paid "is exclusively in consideration of services provided by the employee as part of [his] employment." 11 C.F.R. § 113.1(g)(6)(iii)(B). This requirement is met where the complaint fails to supply evidence that compensation was provided for something other than the services provided as part of employment. Factual and Legal Analysis, MUR 6855 (Justin Amash) at 5, and detailed scrutiny and investigations looking for specific hours also are unwarranted where the employee is "hired in part because of his relationships with potential donors . . . developed over the course of several years in the fundraising business." See MUR 5014 (Jeff Flake for Congress), General Counsel's Report #2 at 15 (Oct. 3, 2003). Moreover, in considering this element, the Commission has emphasized that it does not matter whether an employee works remotely or on a non-traditional schedule so long as the employee "fulfilled all of the duties and responsibilities of his employment," MUR 6853 (Wamp for Congress), Factual and Legal Analysis at 3, and – "[m]ore importantly" – that corporate officials were satisfied with employee's performance and believed they "received good value for the money paid". MUR 5571 MUR 5014 (Tanonaka for Congress), General Counsel's Report #2 at 12.

The reality, however, is that nothing cited supports the allegation; in fact, the Complainant here probably lacked the basic, good-faith basis necessary for filing the complaint in the first place. 11 C.F.R. § 111.4. The first article cited in the complaint, apparently cited for the proposition that "Mr. Arrington has been campaigning full-time since he announced his candidacy on October 15, 2015," is simply a campaign kick-off announcement that says nothing about Mr. Arrington's campaign/work balance after he started campaigning. The second article cited in the complaint, entitled *Arrington's Life on the Road As He Readies for Run-Off*, says that Mr. Arrington attended a pancake dinner and a weekend rattlesnake round-up,³ which hardly suggests that he was failing to perform his corporate work duties. The fact that this latter article also quotes Mr. Arrington as saying "[t]he day after the election, I got up early and drove to Abilene and spent a week in Abilene" is likewise irrelevant. Mr. Arrington's workplace flexibility allowed him to do corporate outreach in communities like Abilene and, if anything, Mr. Arrington's statement about rising early suggests that he wanted to leave room for campaign activities before and/or after completing his work duties for Scott Laboratories.⁴ Finally, in the radio transcript, Mr. Arrington says that he is "still engaged in my business," is "in continual conversation with

³ See Sweetwater Jaycees, *World's Largest Rattlesnake Roundup*, available at <http://www.rattlesnakeroundup.net/> (stating that the event is "held the 2nd weekend in March").

⁴ Moreover, statements like these are similar to those cited by the Commission in dismissing MUR 6853 (Weston Wamp for Congress). In that matter, the candidate was quoted in a news article as saying: "[f]or the six-and-a-half months I've been campaigning, I've been active at Lamp Post. I've been working remotely. I've been in and out of office. . . . Obviously, I've been out a bit." Factual and Legal Analysis, MUR 6853 at 2. Likewise, an employer representative noted: "[Wamp is] working more remotely. His schedule has obviously flexed a lot to make up for that workload." *Id.*

Dr. Hickie," and works for an "employer that gives me the flexibility." All of that is consistent with the legal requirements of 11 C.F.R. § 113.1(g)(6)(iii)(B).

The third element of the Commission's three-part test is whether the compensation paid to Mr. Arrington is consistent with what would be paid to a similarly qualified person. See 11 C.F.R. § 113.1(g)(6)(iii)(C). In applying this criterion, the "Commission has recognized that various intangible factors such as unique qualifications may be considered in determining reasonableness of the amounts paid to [employees]," and that some employees' activities on behalf of an employer "cannot easily be reduced to hours spent or the number of clients [one] tried to land for the company." MUR 5571 (Tanonaka for Congress), General Counsel's Report #2 at 11-12. Instead, in common-sense fashion, the Commission has recognized that employers place a value on the "relationships [one] may have developed, and fundraising experience... gained, long before working for [the current employer]." MUR 5014 (Jeff Flake for Congress), General Counsel's Report #2 at 17 (Oct. 3, 2003). A new hire's "high public profile" and "ability to attract clients" also may factor into compensation decisions. See *id.*; see also MUR 6023 (John McCain 2008 Inc.), First General Counsel's Report at 9 (May 5, 2009) (noting that the "Commission has permitted compensation plans that are tied to factors other than billable hours, such as seniority, the ability to attract clients, and other skills"). Here, Mr. Arrington's unique background, high public profile, past fundraising relationships, and overall skillsets interacting with potential customers more than justified his salary.

CONCLUSION

While the Constitution imposes certain eligibility requirements on who may run for federal office, independent wealth is not—and should not—be one of them. For our democracy to flourish, men and women of all income levels should have an opportunity to participate in the political process, and they should not be forced to give up their livelihood for a year or more to do so. As one commissioner observed in a related context: "I think it's good for the country to have more people who come from different walks of life feel like they can afford to try to run for Congress and that it's not something that's out of their reach."⁵

In 2014, Scott Laboratories was in need of an employee who possessed a unique skillset and deep ties to the community that could help its business grow, and they found that individual in Jodey Arrington. The following year, while continuing to provide exceptional service to his employer, Mr. Arrington decided to run for public office and seek the opportunity to serve his fellow citizens in the United States Congress. Long ago, the Commission recognized that these two pursuits could coexist and, in adopting 11 C.F.R. § 113.1(g)(6)(iii), permitted an employee to continue working in a *bone fide* employment capacity. Because Scott Laboratories' salary payments to Mr. Arrington were consistent with the three elements of that regulation, not to mention the fact that the complaint should be

⁵ Statement of Commissioner Ellen L. Weintraub, FEC Meeting of Oct. 9, 2014, available at http://www.fec.gov/audio/2014/2014100906_07.mp3 (discussing FEC Adv. Ops. 2014-14 (John Trammell) and 2014-15 (David Alan Brat)).



Filing ID #10009542

FINANCIAL DISCLOSURE REPORT

Clerk of the House of Representatives • Legislative Resource Center • 135 Cannon Building • Washington, DC 20515

FILER INFORMATION

Name: Jodey Cook Arrington
Status: Congressional Candidate
State/District: TX19

FILING INFORMATION

Filing Type: Candidate Report
Filing Year: 2015
Filing Date: 02/13/2016
Period Covered: 01/01/2014 - 11/2/2015

SCHEDULE A: ASSETS AND "UNEARNED" INCOME

Asset	Owner	Value of Asset	Income Type(s)	Income Current Year to Filing	Income Preceding Year
American Realty Capital Healthcare Trust, Inc. (HCT)	JT	None	Capital Gains	None	\$1,001 - \$2,500
Facebook, Inc. - Class A (FB)	JT	None	Capital Gains	None	\$1,001 - \$2,500
Fidelity 401k ⇒ Fidelity Cash Reserve Fund (Retirement)		\$100,001 - \$250,000	Tax-Deferred		
Fidelity 401k ⇒ Fidelity Freedom K2035 (Retirement)		\$100,001 - \$250,000	Tax-Deferred		
JLMMAM Rental Property	JT	\$100,001 - \$250,000	Rent	\$2,501 - \$5,000	\$1,001 - \$2,500
LOCATION: Metairie, LA, US					
John Hancock ⇒ Cash		\$1,001 - \$15,000	Tax-Deferred		
KBS Strategic Opportunity Reit	JT	\$15,001 - \$50,000	Distribution	\$1,001 - \$2,500	\$201 - \$1,000

Asset	Owner	Value of Asset	Income Type(s)	Income Current Year to Filing	Income Preceding Year
Montego Capital Fund I Ltd	JT	\$50,001 - \$100,000	Royalties	\$2,501 - \$5,000	\$5,001 - \$15,000
Murphy Oil Corporation (MUR)	JT	None	Capital Gains	None	\$5,001 - \$15,000
Murphy USA Inc. (MUSA)	JT	None	Capital Gains	None	\$1,001 - \$2,500
Oil Rights	SP	\$1,001 - \$15,000	Royalties	\$201 - \$1,000	\$201 - \$1,000
DESCRIPTION: Oil rights on leased property located in Plaquemines Parish, Louisiana on the east bank of the Mississippi River					
Pershing => AMCAP FUND		\$15,001 - \$50,000	Tax-Deferred		
Pershing => American Fund Growth Fund of America	SP	\$15,001 - \$50,000	Tax-Deferred		
Pershing => Business Development Corp of America		\$100,001 - \$250,000	Tax-Deferred		
DESCRIPTION: Business Development Corporation of America ("BDCA") is a non-traded business development company that invests in both the debt and equity of private middle market companies.					
Pershing => Hartford Global Cap Appreciation	SP	\$1,001 - \$15,000	Tax-Deferred		
Pershing => iShares TR Morningstar Mid Cap	SP	\$1,001 - \$15,000	Tax-Deferred		
Pershing-Rollover => American Fund Growth Fund of America	SP	\$15,001 - \$50,000	Tax-Deferred		
Pershing-Rollover => iShares TR Morningstar Mid Cap	SP	\$1,001 - \$15,000	Tax-Deferred		
Pershing-Rollover => Vanguard Index Trust Total Stock	SP	\$1,001 - \$15,000	Tax-Deferred		
Rental Income	JT	\$100,001 - \$250,000	Rent	\$15,001 - \$50,000	\$15,001 - \$50,000
DESCRIPTION: Rental House Lubbock, TX					

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Asset	Owner	Value of Asset	Income Type(s)	Income Current Year to Filing	Income Preceding Year
Royal Dutch Shell PLC Royal Dutch Shell American Depository Shares (RDS.A)	JT	None	Capital Gains	None	\$1 - \$200

* Asset class details available at the bottom of this form.

SCHEDULE C: EARNED INCOME

Source	Type	Amount Current Year to Filing	Amount Preceding Year
Scott Laboratories	Salary	\$183,330	\$97,709.76
Texas Tech University Systems	Salary		\$133,810.33

SCHEDULE D: LIABILITIES

Owner	Creditor	Date Incurred	Type	Amount of Liability
JT	Wells Fargo Bank	August 2012	Mortgage on Personal Residence	\$100,001 - \$250,000
JT	Chase Bank	April 2007	Rental House - 2nd listed rental	\$100,001 - \$250,000

SCHEDULE E: POSITIONS

Position	Name of Organization
President and Board Member	National Institute for Renewable Energy
COMMENTS: Jodey was a former President of NIRE but is now a board member	
Steering Committee Member	Chamber of Commerce
COMMENTS: Imagine Lubbock Together was the name of the project	
Board Member	Spirit Ranch
COMMENTS: Spirit Ranch is a Christian-based leadership development program.	
Board of Elders	Westminster Presbyterian Church
COMMENTS: This is akin to being a Deacon.	

SCHEDULE F: AGREEMENTS

None disclosed.

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SCHEDULE J: COMPENSATION IN EXCESS OF \$5,000 PAID BY ONE SOURCE

None disclosed.

SCHEDULE A ASSET CLASS DETAILS

- o Fidelity 401k
- o John Hancock
- o Pershing
- o Pershing (Owner: SP)
- o Pershing-Rollover (Owner: SP)

EXCLUSIONS OF SPOUSE, DEPENDENT, OR TRUST INFORMATION

Trusts: Details regarding "Qualified Blind Trusts" approved by the Committee on Ethics and certain other "excepted trusts" need not be disclosed. Have you excluded from this report details of such a trust benefiting you, your spouse, or dependent child?

☐ Yes ☒ No

Exemption: Have you excluded from this report any other assets, "unearned" income, transactions, or liabilities of a spouse or dependent child because they meet all three tests for exemption?

☐ Yes ☒ No

CERTIFICATION AND SIGNATURE

☒ I CERTIFY that the statements I have made on the attached Financial Disclosure Report are true, complete, and correct to the best of my knowledge and belief.

Digitally Signed: Jodey Cook Arrington , 02/13/2016

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